Doc Code: AP.PRE.REQ

PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
	600754-3U1

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]	Application Number	Filed
	10/611,494	06-30-2003
on _____	First Named Inventor	
Signature_____	Brian J. Smyth	
	Art Unit	Examiner
Typed or printed name _____	3664	Ronnie M. Mancho

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.
Registration number ___53,564_____.

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/Lisa M. Schoedel/
_____
Signature

Lisa M. Schoedel
_____
Typed or printed name

312-894-7351
_____
Telephone number

August 12, 2009
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☑ *Total of ___1_____ forms are submitted.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
	)
BRIAN J. SMYTH et al.	)
	) **Examiner: RONNIE M. MANCHO**
Serial No.: 10/611,494	)
	) **Group Art Unit: 3664**
Filing Date: June 30, 2003	)
	) **Confirmation No.: 6765**
For: METHOD OF CREATING A	)
VIRTUAL TRAFFIC NETWORK	)

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

    Applicants request review of the Office Action mailed May 14, 2009.

1. Status of the Claims

Claims 16-22 and 81-106 are currently pending. Claims 16-22 and 81-106 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2001/0029425 ("Myr").

2. The Claimed Invention

Claims 16, 81, and 88 are independent claims. In claim 16, Applicants recite a computer-implemented method of creating a virtual traffic network representing traffic conditions on a road system. The method includes inputting into a processor: (1) a base layer comprising map data representing a road system; (2) flow data related to traffic flow on the road system; and (3) information about traffic events on the road system. The road system is defined by a plurality of links and nodes. The processor creates a traffic layer by combining multiple links and nodes of the base layer into a single link with an upstream node and a downstream node. The processor integrates the base layer, the traffic layer, the flow data, and the traffic event information to produce a virtual traffic network representing traffic conditions on the road system. Claim 81 is directed towards an article of manufacture and claim 88 is directed towards a computer-implemented apparatus having elements similar to claim 16.

Claims 17-22, 82-87, and 89-106 are dependent claims. Claims 98, 102, and 106 are directed towards graphically displaying the virtual traffic network. Each of these claims includes the element of *"the graphical display showing at least one of an animated flow display using the flow data and an icon corresponding to the traffic event using the traffic event information."*

3. First Clear Legal Deficiency of Rejections

The Examiner rejected the claims under 35 U.S.C. § 102. "[F]or anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly." MPEP § 706.02. The Examiner erred in the Office Action mailed May 14, 2009 because the Examiner failed to establish a prima facie case of anticipation by pointing out where all of the claim limitations appear in a single reference. Specifically, the Examiner failed to show that Myr teaches *"creating a traffic layer by combining multiple links and nodes of the base layer into a single link with an upstream node and a downstream node."*

In response to Applicants' arguments that Myr does not show or suggest a traffic layer as claimed, the Examiner responded that "'traffic layer' is a phrase coined out by the applicant to mean a traffic layer by combining multiple links and nodes of the base layer into a single link with an upstream node and a down stream [sic] node." (Office Action, page 6.) The Examiner then cited to Myr for teachings regarding inputting updated traffic flow data, accident reports, and traffic situations into Myr's central traffic unit. (Office Action, page 6.) However, these teachings relate to Applicants' step (c) of claims 16, 81, and 88 (*"inputting into the processor flow data related to traffic flow on the road system and information about traffic events on the road system"*).

The Examiner has failed to identify where or how Myr teaches *"combining multiple links and nodes of the base layer into a single link with an upstream node and a downstream node"* to create a traffic layer. This is likely because Myr describes maintaining a "perpetually updated database of travel times for *all sections* of roads." (Myr, Abstract, emphasis added.) However, as described in Applicants' Specification:

> The traffic layer 314 of the road system is ... better suited to processing traffic data than the basic link and node model utilized by the base layer 312.

(Applicants' Specification, paragraph 110.)

4. Second Clear Legal Deficiency of Rejections

The Examiner also erred in the Office Action mailed May 14, 2009 because the Examiner failed to establish a prima facie case of anticipation by failing to show that Myr teaches "*the graphical display showing at least one of an animated flow display using the flow data and an icon corresponding to the traffic event using the traffic event information*" as found in dependent claims 98, 102, 106.

In response to Applicants' arguments that Myr does not show or suggest a graphical display as claimed, the Examiner stated that Applicant argued "that Myr does not disclose a graphical display." (Office Action, page 6.) This statement clearly misrepresents the record. In fact, Applicants distinguished the claimed display from the display shown in Myr's Figure 8. (Request for Continued Examination and Response to Office Action Mailed October 28, 2008, filed February 24, 2009, page 11.)

The Examiner then stated "that Myr disclose [sic] a graphical display in the figures cited." (Office Action, page 6.) The cited figures are Myr's Figures 8, 13, 16-18, and 20. (Office Action, page 5.) While Myr's Figure 8 depicts a display, none of Myr's Figures 13, 16-18, and 20 depict a display. (See, e.g, Myr, paragraphs 34, 37-39, 41.) Myr's Figure 8 depicts a vehicle display that shows: (1) the vehicle's position on a map; (2) text displays for route preference information (start and destination information), shortest time estimate, shortest distance estimate, path recalculation data, user input data, travel information (user input, user query), traffic information (accident information, accident query, and road closures); and (3) audio/video display for voice commands and channel selection data. (Myr, paragraphs 105, 111

and Figure 8.) However, Figure 8 does not show *at least one of an animated flow display using the flow data and an icon corresponding to the traffic event using the traffic event information* as claimed.

5.   Conclusion

For at least the foregoing reasons, Applicants submit that all of the pending claims should be allowed.

Respectfully submitted,

Date: August 12, 2009   By: /Lisa M. Schoedel/
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                                                                             Patent Counsel

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